

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

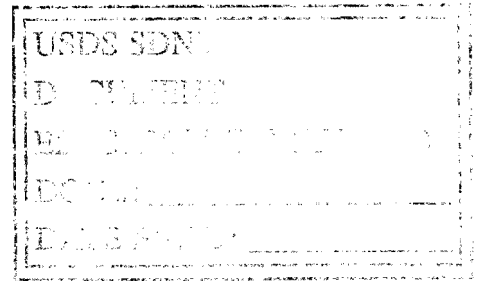
MELVIN McCOY MILES,

Petitioner,

-v-

ROBERT ERCOLE, Superintendent, Green Haven
Correctional Facility,

Respondent.



Case No. 09-CV-1513 (KMK)(PED)

ORDER ADOPTING
REPORT & RECOMMENDATION

KENNETH M. KARAS, District Judge:

Melvin McCoy Miles ("Petitioner") was convicted on April 27, 2006 in Dutchess County Court of one count each of Attempted Murder in the Second Degree, in violation of N.Y. Penal Law §§ 110.00, 125.25(1), Burglary in the First Degree, in violation of N.Y. Penal Law § 140.30(2), and Robbery in the First Degree, in violation of N.Y. Penal Law § 160.15(1). Petitioner was also convicted of two counts of Assault in the First Degree, in violation of N.Y. Penal Law § 120.10(1), (4).

Petitioner was sentenced as a second felony offender to concurrent terms of imprisonment of twenty-one years for the attempted murder conviction, twenty-one years on one of the assault counts, twelve years on the other assault count, and eight years each on the robbery and burglary convictions. (Sentencing Tr. (Ex. 19)). Following a direct appeal, the Second Department affirmed Petitioner's conviction on October 30, 2007. *People v. Miles*, 843 N.Y.S.2d 836 (App. Div. 2007), *leave to appeal denied*, 81 N.E.2d 1209 (N.Y. 2008).

On February 19, 2009, Petitioner filed a petition for a Writ of Habeas Corpus ("Petition") pursuant to 28 U.S.C. § 2254, seeking relief on seven different grounds. (Dkt. No. 1.) The case was referred to the Honorable Paul E. Davison. (Dkt. No. 2.) On October 18, 2011, Magistrate

Judge Davison issued a thorough Report and Recommendation ("R&R") recommending that this Court dismiss the Petition in its entirety. (Dkt. No. 9.) Petitioner has not filed any objections to the R&R.¹ When no objections are filed, the Court reviews a R&R on a dispositive motion for clear error. *See Andrews v. LeClaire*, 709 F. Supp. 2d 269, 271 (S.D.N.Y. 2010); *Eisenberg v. New Eng. Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008). The Court has reviewed the R&R and the Petition, and finding no error, clear or otherwise, adopts the R&R.

Accordingly, it is hereby

ORDERED that the Report and Recommendation, dated October 18, 2011, is ADOPTED in its entirety. It is further


ORDERED that Petitioner's writ of habeas corpus is DISMISSED with prejudice. It is further

ORDERED that because Petitioner has not made a substantial showing of the denial of a constitutional right, a certificate of appealability will not issue, *see* 28 U.S.C. § 2253(c)(2); *Lucidore v. N.Y. State Div. of Parole*, 209 F.3d 107, 111-12 (2d Cir. 2000), and the Court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that any appeal from this Order would not be taken in good faith. It is further

ORDERED that the Clerk of the Court is respectfully directed to close this case.

SO ORDERED.

DATED: White Plains, New York
May 31, 2012


KENNETH M. KARAS
UNITED STATES DISTRICT JUDGE

¹ Magistrate Judge Davison provided notice that objections to the R&R were, pursuant to Fed. R. Civ. P. 72(b) and 28 U.S.C. § 636(b)(1), due within seventeen days, and that the failure to object would constitute a waiver of Petitioner's right to appeal. (R&R 26).

Service List (by mail)

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Copy To:

Honorable Paul E. Davison
United States Magistrate Judge